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ABSTRACT

The role of the school board attorney is directly related to the role of the school administrator. Administrators must learn to use attorneys as sources of expertise and must continually have them on call to assure that problems are handled in a legally sound manner. It should be kept in mind, however, that attorneys are trained in the law and not in school administration and must, as a result, rely on administrators for information on policy and for facts. The school board attorney must know the district's policies and procedures in order to help develop procedures that meet the requirements of the law and of the manner in which the school district prefers to operate. (Author/IRT)

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SPEAKER: Larry L. French, Chief Counsel, Oklahoma State School Boards Association and Oklahoma Association of School Administrators, Seminole, Okla.

TOPIC: The Role of a School Board Legal Counsel

PLACE: Room N-224-27, Convention Center

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"The Role of a School Board Attorney"

A goal, perhaps, of any school board attorney would be to assist you, the school administrator, in administering your school district in a fair and just manner without court interference to the benefit and betterment of the community in which you serve. Essentially, a dissertation on "the role of a school board attorney" or "what to do when you are sued" or "servicing your school district client," should be considered to be somewhat of a self-serving declaration.

Regardless, as your role as an administrator has changed significantly over the past ten to twenty years, so goes the role of the school board attorney. No longer are his services limited to the drafting of a contract or lease, but rather the services that you should expect of your local school board attorney requires that of a specialist. Although the American Bar Association and local bar associations for years have resisted "specialization," (although now they are looking into the matter on a very restricted basis) we lawyers are just as specialized as our colleagues in the medical profession. We have tax lawyers, workman's compensation lawyers, admiralty lawyers, patent lawyers, collection lawyers, amongst others, and now we have school lawyers, a field which has come into its own since the Supreme Court decision of 20 years ago, Brown v. Board of Education. However, school law continues to be a restricted field of endeavor as a very few attorneys practice exclusively the law of public education. For example, the most recent membership directory of the Council of School Attorneys, which is a subsidiary of the National School Boards Association, lists 250 attorneys. Further, I would venture to say that, out of those 250, at least 90 percent represent just one school board which is typically their own local school board.

These attorneys, however, by virtue of their membership in the Council of School Attorneys, as well as membership in such organizations as NOLPE and the local government section of the American Bar Association, are serious about school litigation and determined to provide the type of competent legal representation to their school district client that should be provided. The competent school board attorney must be sought out, the administrator, as he is a critical "source element" relative to your job description.

One can only properly examine the role of the school board attorney by examining the role of the school administrator. Regardless of the size of your particular school district, we all experience common problems. It is simple to say that the success of any one individual wholly depends upon those competent individuals surrounding him. Such is true of any type of endeavor. The retail store owner cannot do it all; he must have one, two or three topnotch salesmen employed to assure his success. This same premise is applicable to the school administrator. His success depends upon his administrators, architects, accountants, builders, negotiation consultants and attorneys. You must learn to utilize your sources of expertise and continually have them "on-call" to assure prospective problems are handled legalistically sound. The administrator today must educate and inform his board of education as to the needs of the school district. He must indicate to his board the complexities and realities of operating a school system. He must further request the authority to seek out the necessary expertise to enable him to do the type of job that the board is expecting of him.

I have long emphasized the "doctrine of preventive litigation." This premise involves four important points:

1. The promulgation of a sound set of updated reasonable and relevant rules and regulations;
2. The preservation of all documentation in an orderly fashion;
3. Membership in organizations designed to further the interest and goals of school boards and administrators with respect to the competent and efficient operation of their school systems;
4. The continued retention of competent expertise, including, but not limited to accountants, architects, attorneys, etc.

It is not that difficult to operate a school system which would exist as one the courts prefer not to delve into. Our courts have been, and continue to be, of the opinion that once school authorities have acted with due consideration of the rights of students, teachers and staff, and that the enacting of codes, rules and regulations are in the best interest of the educational process, the judicial system prefers to leave the operation of the schools to the professionals who are trained to do just that. When you do this you are assured of five basic rights:

1. School authorities have the right to operate their school system in a fair and just manner without judicial intervention;
2. School authorities have the right to confer and negotiate with teachers, students and parents;
3. School authorities have the right to determine operation and procedural guidelines subject to statutory edicts;
4. School authorities have the right to exercise their discretion and professional judgment with respect to the enactment of policy;
5. School authorities have the right to expect full, complete cooperation and assistance from members of the community, as well as those persons responsible directly to the board of education.

Essentially our goals are the same today as they were twenty years ago; the only thing changed is the method of procedure implemented to attain those goals. As an administrator, you must be responsive to a number of elements within the educational process, to wit, the student, teacher, parent, patron, staff, etc. You are clearly the "cog" in the wheel of education to enable that wheel to keep turning; you must implement your operation with a type of competence which is not only necessary, but mandatory, regardless of your budget and regardless of your location, whether it be urban or rural. An interesting concept in this regard is that in recent years a number of rural school operations have, all of a sudden, become urban operations or at least suburb type of operations. Accordingly, they have had to face different types of problems. We have seen the unbelievable input of federal financing and accordingly have had to comply with the federal edict to assure continued input of these types of monies. Each year state legislatures pass new and complex laws relative to the operation of a school system and it is going to get worse before it gets better! So seek out your expertise.

In conclusion, the role of the school board attorney is directly related to the role of the school administrator; upon reading a recent publication by Bob Phay, Past President of NOLPE, who works out of the Institute of Government at North Carolina, Bob indicated that the authors of this particular publication were trained in the law and not school administration. Accordingly, their various drafts were "fed" through a number of school administrators to garner their input, criticisms, suggestions, recommendations, etc., in hopes that the final product would be one which would be workable, yet legal...Such a classic point to remember: Those of us who are trained in the law and not trained in school administration must rely on you, the school administrator, for the input, the policy, the facts. A typical question heard is, "can we do this?" An appropriate answer would be, what is your policy or what have you done in the past? Your particular school system prefers to operate in a certain manner and on this is determined, we can attempt and hopefully succeed to develop a procedural device within the limits of the law.

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